

# THE MONTANA WATERLINE



SPRING/SUMMER

"Montana's Voice for Montana's Water"

1995

## CLEAN WATER ACT STALLED

H.R. 961, federal Clean Water Act reauthorization, passed on a vote of 240 to 185 in the U.S. House of Representatives. H.R. 961 is reasonable Legislation, supported by organizations such as the National Governors Association, League of Municipalities, National Water Resources Association, and etc. However, relentless attack by fanatic environmental extremists who are calling the bill the "dirty water bill" and threats of a veto, make it unlikely that H.R. 961, will become law.

A reluctance to introduce legislation by Senate Environment and Public Works Committee Chairman Senator Chafee of Rhode Island, further clouds the issue. Environmentalists do not want legislation they can support so that they can continue to draw public attention and beat up on conservatives with anti-environment rhetoric.

Although probable that Clean Water Act legislation will be approved by the Senate this year, it will undoubtedly look different than the House version.

Recent House action to hold up EPA appropriations until a Clean Water Act is passed may encourage action.

As was the case during our recent legislative session, legislation that will bring modest balance and reason to environmental regulation is portrayed by environmentalists as an industry orchestrated attack on the environment and the safety of our kids.

As is also the case in Montana, environmentalists are using the water quality issue to attract or hold membership as they witness a declining public support for increasing government control. People are more often supporting balanced legislation that protects public health and the environment, reduces unnecessary government intervention, puts people and private property rights back into the environmental equation, and allows the hard working citizens of this nation to make a good living for their families.

## MIKKELSEN ENTERS RACE

Montana Water Resources Association Board Member, Alan Mikkelsen of St. Ignatius has announced his decision to enter the race for the U.S. House of Representatives. Mikkelsen faces other republicans Rick Hill of Helena and Dwight MacKay of Billings in the republican primary, for the seat currently held by Democrat Pat Williams.

As MWRA's representative Director to the National Water Resource Association, Mikkelsen works closely with state and local governments and congress on numerous water and related environmental concerns and

### FEATURE ARTICLES:

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legislation. Mikkelsen's background in agriculture and concern for reasonable and balanced conservation would serve Montana well.

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## PRESIDENT'S MESSAGE:

Jay Chamberlin, past MWRA President and manager of East Bench Irrigation District, couldn't make it to the Spring Meeting because his wife Shelaine was due at any time with their fourth Child. On May 19th, Shelaine delivered Karston to join three sisters in their beautiful family. Congratulations, Jay and Shelaine!

Executive Director Mike Murphy and I recently drove across the State from Helena to Sidney for our Summer Meeting. I admit not looking forward to such a long drive, but after seeing the beautiful and diverse countryside, it made the drive seem short and enjoyable. Sidney is a picturesque city nestled along the Yellowstone River. The valley is blessed with productive soils supporting a wide variety of crops including a strong sugar beet industry.

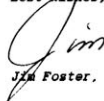
Jerry Nypen, Lower Yellowstone Irrigation Project Manager, provided us with an educational and entertaining tour of the historic Lower Yellowstone Project which extends into North Dakota. We observed the confluence, where the Yellowstone meets the Missouri River. After the tour, we were treated to an unforgettable barbecue of roast turkey, and many side dishes and deserts, hosted by Bud and Ann Grosinsky. Believe me, I did not come back as thin as when I left! I sincerely thank Bud and Ann, Jerry and the Directors, Commissioners, and water users from the Sidney area for their hospitality and friendship during our stay.

The MWRA has always felt that it is imperative to visit and see the different irrigation, hydro-power, individual farms and ranches, electric co-ops and industries such as Holly Sugar and Pegasus Gold first hand. This helps to better appreciate their unique situations and tremendous contributions to local areas and the State. This also reinforces our goal to represent you and be of service to you in a more efficient and effective manner.

I look forward to seeing you at the Annual Meeting at Grouse Mountain Lodge, in Whitefish, November 30 through December 2, 1995.

I hope you have had better luck getting your hay up than I have had.

Best Wishes,



Jim Foster, President

# BASIN WATERSHED MANAGEMENT

By: Eugene Manley

As we continue to explore water issues in this State, extended drought has exposed how vulnerable our river systems are in sustaining the flows we demand of them.

Irrigation, hydropower, municipal, and industrial uses combined with ever increasing demands for in-stream flows to maintain water quality and our valuable fisheries has and will continue to tax many basin systems beyond their delivery capabilities.

Since droughts are nothing new to Montana, instead of year by year last minute contingency plans, we need a plan for our waters that would work--drought or no drought--broad long range planning done on a watershed by watershed basis because every watershed system is different with different dynamics.

Diversions of water from Montana's streams for mining and irrigation began in Montana over a century ago. Present water management systems in highly developed basins are the product of 130 or more years of development through experimentation and planning. As diversions were developed, specific return flow patterns developed allowing additional water to be diverted. These basins are now highly developed systems of complex interrelated,

interdependent, junior and senior rights. These are systems not inherently easy to change by altering places of use, or non-use such as in-stream flow. Those changes can have very negative effects on basin hydrological profiles because they can alter strategic return flow patterns and the integrity of basin water resources which many users now depend on.

Montana is a high mountain state, the very headwaters of major river systems of our country. We are the original custodians of millions of acre feet of water stored climatically in our snowpack and aquifers. As that custodian we have a very special duty to ourselves and downstream states to manage water usages along with storage (structural and non-structural) in ways that maximize the benefits to everyone. Non-structural for those unfamiliar with the term, is that water stored in the annual precipitation and every flood irrigated acre and the necessary canals and ditches add to it large amounts of water.

There need not, and should not be the continuing skirmishes over water levels in Montana's rivers and streams. We are spending far too much time narrowly focusing on how to secure water for in-stream flow without first

understanding what the consequences might be. This while all around us we should see that we are engaged in an advocacy of practices, policies, and procedures that are, and will lead to a further dewatering of our valuable aquifers, irrigated lands, fisheries and wetlands.

Any process this state is involved in should not jeopardize our ability to create non-structural storage and manage the resulting return flows. Basin users must be able to continue practices that enhance aquifer storage and increase return flows that maintain present basin integrity.

Generic state-wide water planning leaves much to be desired and does little to address what are site specific individual problems oddly peculiar to each individual watershed.

We need some ongoing mechanism to help us plan and manage all waters available in each watershed. Basin wide watershed committees would allow us to do better more comprehensive planning in order to insure each basin maximizes its delivery capabilities.

While these committees should not be vested with any legal authority to compel any action by any interest, their purpose should include the following:

(Continued on Page 4)

## **BASIN WATERSHED MANAGEMENT (Cont.)**

(1) Provide educational forums to educate everyone about legal and water management issues in each basin.

(2) Provide some forum for every interest to communicate about watershed issues.

(3) Identify both short and long term water management issues and problems and explore all alternative ways to resolve them.

(4) Facilitate resolution of water related disputes

by collaborative processes including mediation.

(5) Advise government agencies about permitting activities as they relate to overall watershed management.

(6) Work with basin's local governments, and report periodically to some state entity with water management authority.

Agricultural interests must take the lead in forming watershed committees because they own the major share of rights,

and they must retain some control of their own destiny. It is also those agricultural interests within each basin that best understand all the intricacies that makes a basin system work. It was those interests that developed the present basin systems we now have of complex inter-related, inter-dependent water rights on which communities of people, fisheries, wildlife and wetlands depend.

## **LEGISLATIVE HIGHLIGHTS**

The 1995 Legislative Session was a good session for agriculture. Contrary to the picture painted by environmental organizations the environment was not jeopardized for industry.

In the minds of extremist environmentalists some changes were perceived as anti-environment. They are now using their fear tactic approach and a media campaign, threatening referendum to draw public attention and gain support for their organizations. The legislature deserves our thanks for maintaining their positions in the face of such negativism.

The following is a brief summary of some of the key legislation that passed: Montana Water Resources Association supported all of the following:

### **SB 198 - AG LAND TAXATION**

Reflects the results and recommendation of the two year study on irrigated land taxation. Reduces overall average tax increase on irrigated Agri. land from approximately 52% as established under Senate Bill 168 during the 1993 legislative session, to approximately 32%, based upon an additional \$5.50 per acre allowed for water delivery cost. A provision to create a study committee to look at overall Ag land taxation and assessment procedures was amended out.

### **SB 138 - ONE ACRE AG TAX**

Requires that the one acre under a bonafide Agri. farmstead be classed and taxed as agricultural land rather than as class four property.

### **SB 417 EQUIPMENT TAX**

Reduces business equipment taxes (including agricultural equipment) from current 9% down to 6% Reduced by one percent a year beginning in 1996.

### **HB 472 - INSTREAM FLOW.**

Allows the owner of an appropriated consumptive use water right to obtain a temporary change authorization to lease such right to an individual, association, partnership, or corporation for instream flow to benefit the fishery resource. The legislation requires compliance with all current water right processes. Only the owner of the water right may seek to enforce the temporary change authorization or object to other temporary change requests. In

## LEGISLATIVE HIGHLIGHTS (Cont.)

addition to an opportunity to object to the change of use authorization during the initial application process (current law), an appropriator may object during the temporary change renewal process and once during the term of the temporary change permit. This legislation will test leasing feasibility while protecting the prior appropriation process and automatically sunsets in ten years.

### SB 371 - ORWs

Establishes a water quality designation and criteria for Outstanding Resource Waters (ORW), designates the waters within existing wilderness boundaries and national parks as ORWs, requires legislative approval for such designation, specifies non-significant activities and specific exemptions (such as for existing water facilities located within wilderness boundary), and prevents the Dept. of Health from denying a permit pending Board and Legislative approval. This legislation is in response to rules approved by the Dept. of Health in which the Board of Health could make such extremely restrictive designations with little criteria and no legislative approval. Once established, ORW designation prevents any degradation of the water.

### SB 387 - LATE CLAIMS

Allows the water court to relieve a party from a water right abandonment for "good cause shown" and to grant a motion for dismissal to an objection to a preliminary decree under certain conditions, but protects objector rights. Water judge shall appoint a water advisory committee to expedite water adjudication processes.

### SB 330 - NONDEGRADATION

Interprets the definition of Montana's "high quality waters" to cover waters where warranted within the Nondegradation statute. The legislation does not repeal the nondegradation law. There are very few waters that will lose high quality designation and they will still receive federal protection.

### SB 331 - WATER QUALITY ACT

Calls for establishment of more site specific water quality standards. Provides that water treatment standards be economically, as well as environmentally, and technologically feasible. Provides that if the Dept. of Health adopts standards more stringent than federal they must be based upon sound scientific and technical evidence. Defines non significant domestic septic discharge, based upon predictable levels of nitrate at ground water mixing zone boundary.

### SB 144 - Clark Fork Rec.

Creates a surface water permit closure with limited exceptions, within Basin. Continues the Upper Clark Fork Steering Committee, and establishes a temporary water leasing program within basin. Provides that prevailing party in a hearing regarding a water right change in basin may bring an action in district court and the court shall award costs and attorney fees to prevailing party.

### HB 170 - ACREAGE LIMITATION

Allows irrigation districts divested from the Bureau of Reclamation to voluntarily set limitations on the number of acres that can be irrigated under the district by any one land owner. Limitations can be established by approval of at least 60% of landowners representing at least 60% of the acreage in district.

### SB 207 - AG NUISANCE/ZONE

Restricts city, county, or political subdivision from passing nuisance or zoning ordinances or restrictions against agricultural activities, including activities such as noise, smell, water movement, burning, and etc.

### HB 311 - PROPERTY RIGHTS

Executive Branch of State Gov't must evaluate impact on private property rights when it considers action to establish rules or policy.

# BUREAU OF RECLAMATION ISSUES

**TITLE TRANSFER:** Under legislation (H.R. 1232) introduced by Congressman Joe Skeen of New Mexico, the Bureau of Reclamation would transfer title ownership of land and facilities from federal ownership to private irrigation districts. Similar legislation has also been introduced into the Senate by Senator Larry Craig of Idaho.

Under the legislation as introduced, irrigation districts that have paid out their contract obligations would be eligible to obtain title to the federal properties. The legislation requires that the Secretary of the Interior prepare a description of all facilities and land which would be subject to transfer, including acquired lands, project facilities and revenues generated from leases on

these lands. All revenues would be credited to the irrigation district or placed in a reclamation fund which could only be spent by that district.

Hearings have been completed in both the House and Senate. Expectedly, after nearly 100 years of commitment from irrigators, environmental organizations testified that such projects should be sold to the highest bidder.

Many questions remain unanswered. Senator Conrad Burns specifically asked Bureau of Reclamation Commissioner Dan Beard which federal projects in Montana would be eligible for transfer to private irrigation districts. Commissioner Beard stated that although he could not answer the question, he was "interested in transferring as many as possible".

The National Water Resources Association

(Nwra) provided testimony at each of the hearings. The Montana Water Resources Association as well as the NWRA will continue to press for an appropriate process to facilitate desired transfers and we encourage individual districts to assess their own interests.

**BEARD RESIGNS:** Bureau of Reclamation Commissioner Dan Beard recently announced that he will resign his post effective September 1, 1995. Beard has held the position for two years and led the administrations charge to restructure the Reclamation from water development to environmental protection.

Although no replacement has been named, many are speculating that Eluid Martinez from New Mexico will receive the nod. Mr. Martinez recently retired as State Engineer in the State of New Mexico.

## ENDANGERED SPECIES ACT

Senator Slate Gorton of Washington has introduced legislation (S. 768) to reform the Endangered Species Act. Reforming the ESA is extremely important particularly in light of the June 29, 1995 Supreme Court ruling that under current law government has

the right to stop private land owners from actions that may jeopardize habitat of an endangered species.

The U.S. House Endangered Species Task Force has held a series of ten hearings. At the last hearing on May 25th, House Speaker Newt Gingrich commented on the

importance of biodiversity and need for developing a mutually beneficial bill.

Administration officials claim the Act works and that only a small fraction of actions taken to protect various species pit humans or their livelihood against the fate of species.

**MONTANA  
WATER RESOURCES  
ASSOCIATION**

The Montana Water Resources Association (MWRA) is working to protect your rights! Protecting our water and other private property rights will be more difficult in the future.

MWRA combines experience with reason and balance into the management of Montana's water resources. We strive for responsible use and management of our water to protect the asset, while protecting rights of hard working Montanans.

**MEMBERSHIP DUES/ CONTRIBUTION STRUCTURE**

<u>MEMBERSHIP CATEGORY</u>	<u>ANNUAL DUES</u>	<u>MEMBERSHIP CATEGORY</u>	<u>ANNUAL DUES</u>
<b>Business/Firm</b>		<b>Irrigation Dist./Assoc.</b>	
< 10 Employees.....	\$225	Minimum Base.....	\$225
10-100 Employees.....	\$565	Plus, First 5,000	
> 100 Employees.....	\$790	Acres at.....\$ .045/Acre	
<b>Individual</b>		Plus, Acres Over	
Voting.....	\$75	5,000 at.....\$ .034/Acre	
Non Voting.....	\$25	<b>Sustaining Memberships</b>	
<b>Municipalities</b>		Silver.....	\$1,500
City, Town, or County		Gold.....	\$2,000
.....\$ .075 Per. Cap.		Platinum.....	\$3,000
Other.....	\$225	<b>Associate Member...</b>	\$
<b>REA and RTA.....</b>	<b>\$335</b>	<b>Non Member Contrib..</b>	<b>\$</b>

Your membership or contribution and support for the MWRA would be greatly appreciated. For additional information, please call (406) 442-9666.

Please tear off the above information insert and send it with your own letter of encouragement, to a business or individual you feel should be a Member of MWRA. Your support and that of others for the MWRA is crucial to maintaining a strong advocacy position for water and other private property rights. Thank you!

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# THE MONTANA WATERLINE

Dear Montana Water Users:

The legislative session was a good session for water users as well as for the state's economy. While the session was a step in the right direction toward balance and reason in environmental regulation and protection of private property rights, it was not anti-environment as portrayed by environmentalists. In fact, significant environmental

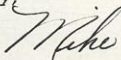
legislation was also passed such as providing a water leasing program to augment instream flow for fisheries.

Environmental groups are using anti-environment rhetoric and talk of a referendum over claims of diminished water quality, to draw public support and membership. Controversy translates into dollars for such organizations. Therefore, it is important that we continue a strong effort and voice to present issues in an accurate and responsible manner. Any security we may feel at this time is tenuous. Recent Supreme Court action on the Endangered Species Act is indicative of what to expect in the future.

Your membership and support for the efforts of the MWRA is appreciated. Please plan to attend the 1995 annual conference in Whitefish and encourage others to attend.

If you have questions, don't hesitate to call me at (406) 442-9666.

Sincerely,



Michael E. Murphy, Exec. Dir.

## 1995 MWRA ANNUAL CONFERENCE

Grouse Mountain Lodge  
Whitefish, Montana  
Nov. 30 through Dec. 2

## THE MONTANA WATERLINE

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